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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-204168.2

DATE: February 17, 1982

MATTER OF: W-I Forest Products, Inc.

DIGEST:

Provision in the National Forest Management Act of 1976 prohibiting the sale of timber for less than its appraised value does not require rejection of a bid as nonresponsive where, although the bid offers slightly less than the appraised value for one species under a timber sale, the pricing discrepancy is only \$117 out of a total bid of more than \$578,000, and the aggregate bid is sufficiently high to accommodate the minimum price for each species, thereby assuring that overall the Government will receive the fair market value for the timber sale as a whole.

W-I Forest Products, Inc. protests the rejection of its bid as nonresponsive to the solicitation for the Copper Mountain Timber Sale, conducted by the Forest Service, Department of Agriculture, and the Forest Service's subsequent refusal to permit a post-bid opening correction of an alleged mistake which would have made W-I's bid responsive. We sustain the protest.

The solicitation called for sealed bids offering to purchase various species of Government-owned timber located in the Copper Mountain region of the Idaho Pan-handle National Forests. Minimum acceptable bids were set forth for each species, the price for larch being set at \$10.30 per unit. Bids were opened July 13, 1981. W-I was the high bidder at \$578,798.90 for all items, but the contracting officer noted that W-I bid only \$10.00 on the larch portion of the sale. Since this bid was \$.30 below the minimum acceptable price in the solicitation, the contracting officer rejected the entire W-I bid as nonresponsive. The Forest Service advises that the contract has since been awarded to Louisiana Pacific Corporation, the second high bidder at \$526,225.90.

W-I claims it intended to bid the \$10.30 minimum price for larch and that it inadvertently entered \$10.00 as its price when posting its bid to the bid form. W-I argues that the contracting officer should have realized at bid opening that its price for larch was probably a mistake, and then given W-I an opportunity to correct its bid. Such an upward correction clearly would be in the Government's best interest, W-I reasons, since its offer already was more than \$52,000 greater than that of Louisiana Pacific.

The Forest Service adopts the contracting officer's view that W-I's failure to offer the specified minimum acceptable price for larch rendered its bid nonresponsive. The agency considers this a material deviation from the solicitation requirements since the minimum prices represented the appraised values of the various species as established by the Secretary of Agriculture, and the National Forest Management Act of 1976 prohibits the sale of timber for less than its appraised value, 16 U.S.C. § 472a(a) (1976). The Forest Service concludes that since there also exists neither regulatory nor case precedent allowing correction of a bid to make it responsive, there was no basis for accepting W-I's bid. We do not agree.

Although, as a general rule, a bid must be rejected as nonresponsive where it does not strictly conform to the solicitation terms and conditions, this rule does not apply to deviations which are immaterial or matters of form rather than substance. Such deviations do not render a bid nonresponsive. Roarda, Inc., B-192443, November 22, 1978, 78-2 CPD 359. Our position in this regard is reflected in the language of Federal Procurement Regulations (FPR) § 1-2.405, entitled "Minor informalities or irregularities in bids." This section states, in pertinent part, as follows:

"A minor informality or irregularity is one which is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation of a bid from the exact requirement of the invitation for bids, the correction or waiver of which would not be prejudicial to other bidders. The defect or variation in the bid is immaterial and inconsequential when its significance as to price, quantity, quality,

or delivery is trivial or negligible when contrasted with the total cost or scope of the supplies or services being procured. The contracting officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive such deficiency, whichever is to the advantage of the Government."

The pivotal question here, then, is whether W-I's bid of \$10.00 per unit of larch instead of the specified \$10.30 minimum was a minor informality. We believe that it was, and that W-I should have been afforded an opportunity to increase its bid to \$10.30.

According to the Forest Service, W-I's bid would have been \$117 higher (for a total bid of \$578,915.90) had W-I bid the minimum for larch. This \$117 discrepancy represented approximately .0002 percent of W-I's total bid price and therefore was clearly "negligible." Further, inasmuch as W-I was the high bidder, there was no possibility that any other bidder would be displaced or otherwise prejudiced by a \$117 upward adjustment in W-I's bid. We conclude that W-I's bid was responsive and that the \$117 pricing defect should have been corrected as a minor informality.

In so concluding, we reject the Forest Service's view that the statutory prohibition against selling timber for less than its appraised value at 16 U.S.C. § 472a(a) compelled rejection of the bid. The Forest Service reads the statute as requiring it to reject as nonresponsive any bid which fails to offer the minimum price for every species of timber, no matter how minor the deviation. We find this interpretation unnecessarily narrow. Congress' only stated intent in adopting this prohibition was to assure that the United States would receive at least "fair market value" for its timber. See S. Rep. No. 94-893, 94th Cong., 2nd Sess. 20, reprinted in [1976] U.S. Code Cong. & Ad. News 6662, 6680. This intent is satisfied, we think, even where a bidder offers slightly less than the appraised value for one species, when the total bid price is sufficiently

high so that it clearly accommodates the minimum price for each species so that fair market value will be received for the timber sale as a whole. This interpretation would permit the Forest Service to consider bids which, as here, contain minor defects which are outweighed by the potential economic benefit to the Government. We therefore see no reason why such bids should be treated any differently than bids containing other types of minor informalities.

Since W-I's bid clearly represents at least fair market value for the timber sale (inasmuch as it is \$52,000 greater than the awardee's bid), and the \$117 pricing deficiency meets the criteria for correction of a minor informality, we conclude that W-I's bid was responsive in all material respects and that W-I should therefore have received the award if otherwise eligible.

Although we sustain the protest, it is unclear whether it would be practicable at this juncture to terminate Louisiana Pacific's contract for the convenience of the Government in order to make an award to W-I. The Forest Service advises, for instance, that Louisiana Pacific has already submitted its plans for four miles of road construction to be completed between June and November 30, 1982. We accordingly are recommending to the Secretary of Agriculture that the Forest Service consider the feasibility of such a termination, taking into consideration the cost of termination as compared to W-I's higher bid price, and the willingness and ability of W-I to satisfactorily perform if it received the award at this late date.

for Shilton J. Aroclaw
Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-204168.2

February 17, 1982

The Honorable John R. Block
The Secretary of Agriculture

Dear Mr. Secretary:

Enclosed is a copy of our decision of today sustaining the protest of W-I Forest Products, Inc. against the rejection of its bid as nonresponsive to the solicitation for the Copper Mountain Timber Sale. The sale was conducted by the Forest Service.

We have sustained the protest on the ground that W-I's bid of \$10.00 per unit of larch instead of the \$10.30 minimum price specified in the solicitation constituted a correctable minor informality, and thus did not render the bid nonresponsive. This holding is consistent with prior decisions of our Office recognizing that such minor defects may be corrected or waived where to do so would have a negligible impact on the price, quantity or quality of the goods or services, and no other bidder would be prejudiced. We have found both of these prerequisites satisfied in this case.

In addition, although section 14(a) of the National Forest Management Act of 1976 prohibits the sale of timber for less than its appraised value, we find unreasonable Forest Service's interpretation that bids offering less than the appraised value for a single species are therefore nonresponsive, no matter how slight the deviation. So long as such a bid clearly represents at least the fair market value of the timber sale as a whole, then if the pricing defect satisfies the criteria for a minor informality, we believe the bid should be deemed responsive. Applying these considerations here, W-I's bid was responsive and W-I was thus entitled to the award if found otherwise eligible.

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Although we have sustained the protest, we recognize that it may not be practicable to terminate Louisiana Pacific's contract for the convenience of the Government at this time. We recommend, however, that the Forest Service conduct an expedited review of the feasibility of such a termination, taking into account, among other factors, the estimated termination costs as compared to W-I's higher bid price, and W-I's willingness and ability to satisfactorily perform if it received the award at this late date. Our Office should be advised of the determination in this regard. Whatever the final determination, we recommend that the noted deficiency be avoided in future timber sales.

Sincerely yours,

for *Milton J. Fowler*
Comptroller General
of the United States

Enclosure